A **SEMANTAN ESTATES (1952) SDN BHD**

v.

KERAJAAN MALAYSIA

B HIGH COURT MALAYA, KUALA LUMPUR
ZURA YAHYA JC
[CIVIL SUIT NO: S7-21-213-2003]
31 MARCH 2010

C ***LAND LAW:*** *Trespass - Unlawful occupation - Failure of Collector of Land Revenue to comply with relevant provisions of Land Acquisition Enactment - Failure of Collector to conduct enquiry - Award made in relation to land invalid - Estoppel - Res judicata - No unjust enrichment - Wrongful possession of land*

D ***LAND LAW:*** *Acquisition of land - Validity of acquisition - Failure of Collector of Land Revenue to comply with relevant provisions of Land Acquisition Enactment - Failure of Collector to conduct enquiry - Award made in relation to land invalid - Estoppel - Res judicata - No unjust enrichment - Wrongful possession of land*

E ***LAND LAW:*** *Acquisition of land - Award - Validity of - Failure of Collector of Land Revenue to comply with relevant provisions of Land Acquisition Enactment - Failure of Collector to conduct enquiry - Estoppel - Res judicata - No unjust enrichment - Wrongful possession of land*

F This was the plaintiff's action seeking a declaration that it retains its beneficial interest in 263.272 acres of land ('said land') and for mesne profits as damages for trespass as a result of the defendant having taken wrongful possession of the said land from the plaintiff. G The plaintiff's stand was that the taking of possession of the 263.272 acres by the defendant from the plaintiff was unlawful and wrongful since the Collector of Land Revenue ('Collector'), in relation to 250 acres, had failed to comply with the relevant provisions of the Land Acquisition Enactment ('Enactment') and, H in respect of 60 acres taken under Gazette Notification No. 117 dated 25 February 1958 ('GN117/58'), had not conducted any enquiry under any written law. This matter had also been referred to the High Court ('reference'). The case was reported as *Semantan Estate (1952) Ltd v. Collector of Land Revenue ('Semantan No. 1')* I and the trial judge had held, *inter alia*, that the conditions in s. 22 of the Enactment must be complied with before the Collector could make the reference and the court had jurisdiction

to act on it. It was submitted for the defendant that there was no statement by the plaintiff that it did not receive an award of RM1,320,500 and also an additional award and interest for a sum of RM79,241.01. In the case of *Semantan No. 1*, the plaintiff was not successful in its claim for the additional award but did not file an appeal against it. It was thus averred that the plaintiff's claim in this case was for unjust enrichment for damages arising from trespass on the said land.

Held (allowing the plaintiff's action):

(1) From the documentary evidence, it could be seen that the Collector had failed to comply with several provisions of the Enactment when taking possession of the 263.272 acres. In relation to the 250 acres, the Collector had failed to comply with ss. 8, 9(ii) and 11(i) of the Enactment. As regards the 60 acres supposedly taken under GN 117/58 no enquiry was ever held, which was also amounted to non-compliance with the Enactment. The Collector had further admitted in a letter dated 3 May 1958 that the award of 27 November 1956 (relating to the 250 acres) was invalid and that the enquiry of 27 November 1956 – pursuant to which the award was made – was a nullity. Due to these circumstances, the parties attempted to resolve the issue by proceeding with the reference and during the hearing of *Semantan No. 1*, the Collector again admitted that the award was invalid and contained a fatal defect. Thus, the defendant was estopped from contending that the Collector's award was valid. (paras 19-21)

(2) With the court's finding in *Semantan No. 1* that it could not entertain the reference because of what had transpired, the irregularities and the fact that there was no enquiry or award made in respect of the 60 acres, the result was that there was no valid award upon which the 263.272 acres was taken from the plaintiff. That being so, by virtue of the doctrine of issue estoppel and *res judicata*, the defendant was not entitled to say that there had been an award made in respect of the 263.272 acres of land. (para 26)

(3) This court was not persuaded by the defendant's submission that the plaintiff's claim was for unjust enrichment. The plaintiff had at all times never agreed that the amount it accepted under protest was sufficient compensation, but was

unable to challenge the adequacy of the compensation due the court's finding in *Semantan No. 1* that it could not entertain the reference. Since the award was not properly made in substantial conformity with the relevant provisions of the Enactment (in relation to the 250 acres) and no enquiry or award was made in respect of the other 60 acres, there was, therefore, no lawful acquisition of the 263.272 acres. This led to a claim for trespass where the defendant had to pay damages. Hence, there was no unjust enrichment. (para 27)

(4) For the reasons adumbrated above, the defendant had not taken the 263.272 acres of land from the plaintiff lawfully and thus had remained in wrongful possession of the said land. (para 28)

Case(s) referred to:

Almalgamated Investment case [1982] 1 QB 84 ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Berhad [1995] 4 CLJ 283 FC ***(refd)***

Chong Kew v. Leow Lay & Ors [2009] 1 CLJ 756 CA ***(refd)***

Malayan United Finance Bhd v. Noormurni Sdn Bhd & Anor [1988] 1 CLJ 149; [1988] 1 CLJ (Rep) 190 SC ***(refd)***

Semantan Estate (1952) Ltd v. Collector of Land Revenue [1960] 1 LNS 124 HC ***(refd)***

Legislation referred to:

Land Acquisition Enactment, ss. 4(i), 6(i), 8, 9(ii), 11(i), 22(i), (iv)

Other source(s) referred to:

Halsbury's Laws of England, 4th edn, vol 16, para 1530

For the plaintiff - Ira Biswas (Janet Chai Pei Ying with him); M/s Chooi & Co

For the defendant - Aida Adhha Abu Bakar (Najwa Bistaman with her); AG's Chambers

Reported by Suresh Nathan

JUDGMENT

Zura Yahya JC:

[1] Plaintiff's action is for a declaration that the plaintiff retains its beneficial interest in 263.272 acres of the land formerly held under Lot 4898 CT 17038 in the Mukim of Batu, and for mesne profits as damages for trespass as a result of the defendant having taken wrongful possession of the said land from the plaintiff.

[2] The abovementioned title is part of the land held originally under title CT No. 12530 Lot 4647. On 15 February 1958 at the request of the plaintiff who was the registered owner the title CT 12530 was cancelled and two new titles were issued. They were CT No. 17037 Lot 4897 comprising a total area of 1 acre 0 rood 1.4 poles, and CT No. 17038 Lot 4898 comprising a total area of 699 acres 2 roods 39 poles. CT No. 17038 was subsequently cancelled and on 6 May 1977 a new title issued namely, Grant 755 Lot 4895 comprising a total area of 699 acres 2 roods and 39 poles. The area of 263.272 acres which is the subject matter of this action formed part of the 699 acres 2 roods 39 poles held under CT No. 17038.

[3] In the statement of agreed facts it is stated that by gazette notification No. 401 dated 19 July 1956 (GN 401/56) it was notified in the Selangor Government Gazette that under s. 4(i) of the Land Acquisition Enactment (the Enactment) an area of land measuring 225 acres from the land held under CT 12530 and registered in the name of plaintiff, was likely to be needed for a public purpose, namely a Diplomatic Enclave. This was followed by gazette notification No. 577 dated 20 October 1956 (GN 577/56) where it was declared under s. 6(i) of the Enactment that the 225 acres was needed for a public purpose, to wit, a Diplomatic Enclave. On 5 November 1956 a notice dated 31 October 1956 that the Government intends to Take Possession of the 225 acres under the Enactment was received by the plaintiff. The notice stated that all persons interested in the 225 acres were to appear before the Collector to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections, if any, to the measurements made.

[4] Also in the statement of agreed facts is that during the hearing before the collector on 20 November 1956, it was shown the boundaries of the areas to be acquired was 250 acres of land held under CT 12530. Plaintiff made a formal request for the supply of a final plan and also raised various objections. The hearing was then postponed to 27 November 1956. At the hearing on 27 November 1956, plaintiff made a claim for compensation of RM13,000 per acre and their counsel also delivered a letter to the Collector to the effect that the Anglo (Thai) Corporation Ltd of Singapore was an interested party in that it had an option to purchase 63 acres of land held under CT 12530. The Collector,

however, made an award of compensation to the plaintiff at the rate of RM5,282 per acre for the 250 acres (hereinafter referred as the award), thus making the total amount awarded to be RM1,320,500. The written offer of compensation for the amount awarded was issued on 1 December 1956. Thereafter on 3 December 1956, the collector took possession of the 250 acres.

[5] Plaintiff followed up by a letter dated 22 December 1956 whereby informing the collector that they received the payment awarded under protest as to the sufficiency of the amount and that they would also be making an application to the collector for a reference to the court. By letter dated 10 January 1957, plaintiff notified the collector that they did not accept the Award, and that they required the collector to refer the matter to court.

[6] Meanwhile, by a gazette notification No. 61 dated 22 January 1958 (GN 61/58), the Government of the State of Selangor notified that they were withdrawing from the acquisition declared under GN 577/56, an area of land measuring 22 acres 1 rood 24 poles of CT 12530. However by gazette notification no. 117 dated 25 February 1958 (GN 117/58) it was declared that an area measuring 60 acres 2 roods 27.5 poles of CT 12530 was needed for a public purpose, namely for extensions to the Diplomatic Enclave. The possession of this 60 acres was taken by the collector without an enquiry being held nor compensation paid.

[7] Also in the statement of agreed facts it is stated that by a letter dated 3 May 1958 from the collector to the then solicitor for the plaintiff, Messrs Shook Lin & Bok, the Collector admitted that the Award was invalid and that the enquiry of 27 November 1956 as a whole was a nullity. By this same letter, the collector informed the then solicitor for the plaintiff about notices under the Enactment. The notice that the Government intends to take possession of 202 acres 2 roods and 16 poles of CT 12530 was given to the plaintiff and enquiry for the acquisition of the said land was scheduled to be held on 18 June 1958. However, the enquiry in respect of the said land was postponed from 1 August 1958 to 15 August 1958 and finally abandoned on 24 March 1959.

[8] By a letter dated 1 August 1958 from Messrs Shook Lin & Bok to the Honourable Attorney-General, the latter was informed that the plaintiff argued that all procedural matters be settled in the manner set out in the letter provided the Government

confirmed the agreement. The State Legal Adviser *vide* the letter dated 5 January 1959 replied to Messrs Shook Lin & Bok confirming the arrangement set out in the latter's letter. Thereafter on 29 May 1959, a reference was made to the High Court in respect of the purported acquisition of the 263.272 acres under GN 401/56.

[9] The Reference came up for hearing in 1960 before Ong J. The case is reported as *Semantan Estate (1952) Ltd v. Collector of Land Revenue* [1960] 1 LNS 124 (Semantan No. 1). By his decision on 21 September 1960 Ong J decided, *inter alia*, that:

a) The conditions in section 22 of the Enactment must be complied with before the Collector can make the reference and the Court has jurisdiction to act on it.

[10] After the judgment in Semantan No. 1 Messrs Shook Lin & Bok by their letter dated 27 February 1961 to the solicitors for the collector stated that the plaintiff required the collector to make an award in respect of proceedings initiated under GN 401/56 in respect of the 202 acres, alternatively if the collector maintains that he has made a valid award, to make a reference to the High Court under s. 22(i) of the Enactment pursuant to the plaintiff's solicitor's letter of 10 January 1957. Plaintiff also requested the collector to make an award in respect of the proceeding initiated under GN 117/58 in respect of the 60 acres. By letter dated 14 March 1961 solicitors for the collector stated that the collector claimed *inter alia*, that it is not competent for the collector to take the steps required of him by the plaintiff so long as his award remains. The collector also stated that the only award by the collector that exists is the award which relates to the 250 acres that the plaintiff had received compensation for the 263.272 acres and that the only reservation made by the plaintiff was as to the amount ie, the rate per acre. The collector also stated that should the plaintiff wish to apply to the collector that the matter be referred to court, they should obtain the necessary leave to enlarge the time prescribed to do so under s. 22(iv) of the Enactment.

[11] Subsequent event after the judgment in the case of *Semantan No. 1* was that on 18 February 1963, the Ruler-in-Council granted the 263.272 acres to the Federal Land Commissioner. Thereafter 38 separate titles were issued and registered in the name of the Federal Land Commissioner.

[12] Plaintiff did apply for an order of *mandamus* directed at the collector of Land Revenue Wilayah Persekutuan requiring him to complete the acquisition proceedings in accordance with the provisions of the Acquisition Act by holding an enquiry and determining the amount of compensation to be paid in respect of the acquisition of the 263.272 acres. When the matter came up on appeal before the Supreme Court, it was decided that the plaintiff's application for an order for *mandamus* be dismissed. Thereafter the plaintiff filed the writ of summons herein for trespass by the defendant in relation to the defendant taking possession of the 263.272 acres.

[13] Although witnesses are being called during the hearing, their testimony is not crucial. What is important when determining the issues in this case is the documentary evidence as in the bundles of documents filed in court.

[14] Plaintiff's stand in this action is that the taking of possession of the 263.272 acres by the defendant from the plaintiff is unlawful and wrongful since the collector in relation to the 250 acres, had failed to comply with the relevant sections in the Enactment and for the 60 acres taken under GN 117/58 there was in fact never any enquiry under any written law. Defendant's view on this, as submitted by the learned Senior Federal counsel is that the plaintiff should not make it an issue since the acquisition of the land by the Government was made *vide* GN 401/56, and the letter dated 1 August 1958 by Messrs Shook Lin & Bok agreeing to settle all procedural matters and to proceed with regard to the quantum of compensation. It has also been pointed out that the plaintiff had received the full amount of compensation awarded on 22 December 1956.

[15] As regard to the letter dated 1 August 1958 by Messrs Shook Lin & Bok referred by the learned Senior Federal Counsel, I am of the view that it should not be considered just by itself. The State Legal Adviser had replied to it by his letter of 5 January 1959. Prior to this letter of 1 August 1958, it is not incorrect to say that there was the letter by the collector dated 3 May 1958. This earlier letter and the reply letter by the State Legal Adviser have to be considered together with the letter of 1 August 1958 so that the matter can be put in proper perspective.

[16] In the case of *Semantan No. 1*, Ong J had considered the letters dated 3 May 1958 and 5 January 1959 mentioned above. In the letter of 5 January 1959, reference was made to the letter of 1 August 1958. After considering the mentioned letters Ong J stated that the parties sought to resolve the problem by agreement. He went on to state "The parties themselves cannot, by an agreement to waive irregularities in procedure and to seek a reference, confer jurisdiction on the court, dehors the Enactment."

[17] Further, upon reading the two letters of 1 August 1958 and 1 May 1959 it can be concluded that they were written for the purpose of trying to resolve the problems. It was more with the view of the reference proceeding. It is not a case where there was a settlement agreement between the parties. Thus defendant cannot rely on these letters to say that the plaintiff has agreed to waive irregularities and hence they (defendant) can take the land unconditionally.

[18] As regard to the fact that the plaintiff has accepted the compensation in 1956 it has in no way indicated that they are no longer pursuing their claim. As stated by witness for the plaintiff, ie, PW1 and also by the defendant's sole witness, the compensation was accepted by the plaintiff on protest. There is also the evidence that after the decision in the case of Semantan No. 1, the plaintiff had written to the collector requesting him to make an award or alternatively to make reference to the High Court. Plaintiff subsequently filed an originating motion for an order of *mandamus* directed at the collector of Land Revenue, Wilayah Persekutuan requiring him to complete the acquisition proceeding by holding an enquiry and determining the amount of compensation to be paid in respect of the acquisition of the 263.272 acres. After failing to get an order of *mandamus* plaintiff then filed the writ of summons in this case. Besides the mentioned court proceedings, plaintiff have also adduced evidence that they continued to lodge their protest when certain areas of their land under CT 17038 and also those which by then have been registered in the name of the Federal Land Commissioner, when declaration was published in the Selangor Government Gazette dated 5 November 1964 and 21 September 1972 that the land was needed for the purpose of a through route from the diplomatic enclave to Batu village, and for a pump house, staff quarters and road. All these refute the contention put forward by the defendant that the plaintiff has accepted the compensation awarded.

[19] Going through the documentary evidence as can be seen in the agreed bundle of documents (Part A) which has been marked 'A' it can be seen that collector failed to comply with several sections of the Enactment when taking possession of the 263.272 acres. In relation to the 250 acres, the collector failed to comply with s. 8 of the Enactment whereby he failed to cause the land subject to the acquisition to be marked out, measured and a plan made thereof. This can be seen from the notes of the hearing on 20 November 1956 (p. 3 of bundle A) where the plaintiff asked for a final plan. The presence of a plan is crucial since in the gazette notification stated an area of 225 acres would be taken but at the hearing the boundaries of the areas to be acquired showed it amounted to 250 acres. From the same notes of hearing, it can be seen that the collector had failed to comply with s. 9(ii) which required that the hearing of the notice should not be earlier than 21 days of the publication of the notice. What had happened then was that the notice dated 31 October 1956 was served on the plaintiff on 5 November 1956 in respect of an enquiry to be held on 20 November 1956. Further non-compliance by the collector was in regard to s. 11(i) whereby after being informed that Anglo (Thai) Corporation Ltd of Singapore was an interested party in that it had an option to purchase 63 acres of land held under CT 12530, he failed to apportion the compensation among all the persons known or believed to be interested in the land.

[20] Although the collector had withdrawn 22 acres from the land taken but then had added 60 acres to make the total area of land taken to be 263.272 acres. This 60 acres was supposedly taken under GN 117/58 but in fact there was never any enquiry held under any written law. Thus this is also done not in compliance with the Enactment.

[21] The other factor which the plaintiff relied to show that the defendant's possession of the land is unlawful is based on the collector's letter mentioned earlier, ie, letter dated 3 May 1958. In this letter the collector had admitted that the award of 27 November 1956 (relating to the 250 acres) after which the Government took possession of the 250 acres was invalid. And in the same letter the collector also admitted that the enquiry of 27 November 1956 pursuant to which the award was made was a nullity. Besides this letter of 3 May 1958, plaintiff has also shown that for the 60 acres purportedly taken under GN 117/58, no

enquiry under any written law was done. Due to this circumstances, parties attempted to resolve the issue by proceeding with the reference in the manner they have confirmed in their respective letters of 1 August 1958 and 5 January 1959. During the hearing in the case of *Semantan No. 1,* the collector again admitted that the award was invalid and contained a fatal defect. Thus going by what has been stated, I am of the opinion that the defendant is estopped from contending that the award of the collector is valid.

[22] In *Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Berhad* [1995] 4 CLJ 283, the Federal Court has cited with approval the *Almalgamated Investment* case [1982] 1 QB 84 where Lord Denning had stated:

> When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[23] In the present case, plaintiff has acted to their detriment by reason of the defendant's admission that the award was invalid, and agreeing to the reference proceeding in the manner that it did and which then led the court to decline to act on the reference. In the light of the defendant's admissions (in their letter and in court) and their own actions, the defendant is estopped from contending that the award is valid and the land has been taken lawfully.

[24] Another factor relied by the plaintiff is on issue estoppel and *res judicata* by virtue of court's finding. The case of *Malayan United Finance Bhd v. Noormurni Sdn Bhd & Anor* [1988] 1 CLJ 149; [1988] 1 CLJ (Rep) 190; [1988] 1 MLJ 395 has been referred to. There the Supreme Court held:

> … (1) issue estoppel can arise even where a plea of *res judicata* cannot be established because the causes of action are not the same,
>
> (2) the doctrine of *res judicata* is not a technical doctrine applicable only to records but it is fundamental doctrine of all courts that, there must be an end to litigation.

In the said case, the court has stated that *Halsbury's Laws of England* – 4th edn. vol. 16 para. 1530 succinctly sets out the law, which is as follows:

> A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. This principle applies whether the point involves in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law …

[25] In *Chong Kew v. Leow Lay & Ors* [2009] 1 CLJ 756; [2008] 6 MLJ 78, the Court of Appeal held:

> 1) *Res judicata* is a matter adjudged and it created an estoppel per *rem judicatum*. When a matter between two parties had already been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more because the judgment becomes the truth between such parties who should accept it as the truth – *res judicata* pro veritate accipitur …

[26] With the court's finding in the case of *Semantan No. 1* that it could not entertain the reference because of what has transpired, the irregularities and the fact that there was no inquiry or award made in respect of the 60 acres under GN 117/58, the effect of it is that there is no valid award upon which the 263.272 acres was taken from the plaintiff. That being so, by virtue of the doctrine of issue estoppel and *res judicata*, the defendant is not entitled in the present case to say that there has been an award made in respect of this 263.272 acres of land.

[27] Learned Senior Federal Counsel has submitted that there was no statement by the plaintiff that they did not receive an award of RM1,320,500 and also an additional award and interest for a sum of RM79,241.01. In the case of *Semantan No. 1* plaintiff was not successful in their claim for the additional award but they had not filed an appeal against it. Thus it was submitted that plaintiff's claim in this case was for unjust enrichment for damages arising from trespass on the said land (Keuntungan berganda dari gantirugi terhadap pencerobohan ke atas tanah yang berkenaan). I am not persuaded by this submission. In this case it is clear that

the compensation has been accepted by the plaintiff under protest. It can be seen that the plaintiff has at all time never agreed that the amount accepted by them under protest was sufficient compensation. With the finding of the court in the case of *Semantan No. 1* that it cannot entertain the reference, plaintiff was then not able to challenge the adequacy of the compensation. And since the award was not properly made in substantial conformity with the relevant provisions of the Enactment (in relation to the 250 acres) and no enquiry or award made in respect of the other 60 acres, there is therefore no lawful acquisition of the 263.272 acres. This has led to a claim for trespass where the defendant has to pay damages. Hence there is no unjust enrichment.

[28] For the reasons adumbrated above I find that the defendant has not taken the 263.272 acres of land from the plaintiff lawfully and hence has remained in wrongful possession of the said land. Hence plaintiff's claim as prayed in paras. 1, 2 and 3 in the statement of claim is allowed. It is further ordered that mesne profits as damages be assessed by the senior assistant registrar.